

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
9

10 ROBERT A. STANARD,

11 Plaintiff,

12 v.

13 MARIA DY, et al.,

14 Defendants.

15 CASE NO. C19-1400-RSM

16 ORDER GRANTING MOTION TO
DISMISS

17 I. INTRODUCTION

18 This matter comes before the Court on Defendants' renewed Motion to Dismiss. Dkt. #52. For the following reasons, the Court shall GRANT Defendants' Motion.

19 II. BACKGROUND

20 A. Factual Background

21 The Court adopts the relevant factual background from its previous Order, Dkt. #44, and
22 the Ninth Circuit's Opinion, Dkt. #49. Plaintiff contracted Hepatitis C Virus while in a Bureau
23 of Prisons ("BOP") facility in 2009. On November 10, 2016, Plaintiff entered the Federal
24

1 Detention Center at SeaTac, Washington (“FDC SeaTac”) pending trial with this pre-existing
2 diagnosis. Plaintiff discussed his diagnosis and possible treatment with Dr. Maria Dy, the FDC
3 SeaTac medical doctor, but refused treatment at that time.

4 Plaintiff was convicted in January 2018 and sentenced on July 13, 2018. Following his
5 conviction, Plaintiff requested treatment for his Hepatitis C from FDC SeaTac staff, including
6 Defendants. Defendants rejected his request because he was considered a pretrial detainee, and
7 his AST-Platelet Ration Index (“APRI”), used by the U.S. BOP to assess liver damage, was not
8 within the range to receive priority treatment under then-existing BOP policy. Specifically, upon
9 meeting with Dr. Dy again, Dr. Dy informed Plaintiff that his January 2, 2018, APRI of 0.41,
10 below a 2.0, did not qualify him for priority treatment at that time. Though, as the Ninth Circuit
11 noted, Plaintiff’s APRI rose from a 0.6 to 2.51 sometime after November 2017, Plaintiff’s APRI
12 lowered to 0.41 by January 2, 2018.

13 Plaintiff then pursued his requests for treatment through the BOP administrative process
14 by filing a BP-8 form on March 2, 2018. After receiving no response and on advice from his
15 counselor, Plaintiff resubmitted his BP-8 on April 3. On May 13, 2018, Plaintiff’s request was
16 denied because he was “treatment Priority Level 3” due to his January 2 APRI and his pretrial
17 detainee status. Plaintiff was informed that he would continue to be monitored.

18 Plaintiff then submitted a BP-9 request to Warden Dan Sproul on May 15, which was
19 denied on May 22, 2018, on the same basis. Plaintiff complained of abdominal pain and worried
20 that his health would decline after watching a fellow inmate die from untreated Hepatitis C. On
21 May 30, 2018, Plaintiff appealed Warden Sproul’s decision by submitting a BP-10 to the Western
22 Regional Director, J. Baltazar. Plaintiff argued that his status had changed given that he was
23 convicted in January 2018 and his disease affected his enjoyment and participation in daily

1 activities. On September 28, Plaintiff was transferred to Federal Correctional Institution (“FCI”)
2 Sheridan.

3 After receiving no response on his BP-10, Plaintiff filed a BP-11 appeal to the Central
4 Office Administration on October 7, 2018. Plaintiff saw a doctor at FCI Sheridan on November
5 19 and was informed he would receive treatment soon.

6 Plaintiff received responses his BP-10 and BP-11 on November 13 and December 6. Both
7 responses concluded that Plaintiff was receiving adequate care. At FCI Sheridan, new laboratory
8 tests were ordered, and Plaintiff was placed on a list for follow-up evaluation. In November or
9 December 2018, Plaintiff began treatment at FCI Sheridan and successfully completed treatment
10 in May 2019.

11 **B. Procedural Background**

12 Plaintiff filed this *pro se* and *in forma pauperis* action on August 30, 2019, seeking \$30
13 million in damages under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 38 (1971).
14 Dkt. #1. In his amended Complaint, Plaintiff alleges Eighth Amendment violations based on
15 Defendants’ deliberate indifference to his medical needs, along with Fifth Amendment
16 violations. Defendants moved to dismiss Plaintiff’s claims on December 21, 2020. Dkt. #30.
17 On March 10, 2021, United States Magistrate Judge Peterson issued the Report &
18 Recommendation (“R&R”) granting the dismissal. Dkt. #36. Regarding Plaintiff’s Eighth
19 Amendment claims, Judge Peterson concluded that Plaintiff’s *Bivens* claims arose in a new
20 context, and *Bivens* was not properly extended to his claims because Plaintiff had other available
21 remedies. *Id.* at 14. Judge Peterson also concluded that, even if Plaintiff could have brought a
22 *Bivens* claim, he had failed to state a cognizable claim for relief on the basis that Plaintiff alleged
23 no facts from which the Court could reasonably infer that Defendants violated his Eighth
24

1 Amendment rights. *Id.* at 14-16. Judge Peterson reasoned that, “at most,” Plaintiff alleged “a
 2 difference of opinion concerning proper medical care.” *Id.* at 16.

3 On July 1, 2021, this Court adopted the R&R, holding that Plaintiff’s claims arose in a
 4 new context and declined to extend *Bivens* to redress his claims. Dkt. #44 at 5-9. This Court did
 5 not address the validity of Plaintiff’s Eighth Amendment Claims.

6 Plaintiff appealed this Court’s Order on July 19, 2021. Dkt. #44. On December 11, 2023,
 7 the Ninth Circuit affirmed this Court’s dismissal of Plaintiff’s Fifth Amendment claims. Dkt.
 8 #49 at 14. However, finding that Plaintiff’s Eighth Amendment claims arise within an existing
 9 context under *Bivens*, the Ninth Circuit reversed this Court’s decision on those claims. *Id.* at 13.
 10 On April 5, 2024, Defendants filed the instant Motion to Dismiss. Dkt. #52.

11 III. DISCUSSION

12 A. Legal Standard

13 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
 14 true and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
Riverside County Office of Educ., 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
 15 However, the court is not required to accept as true a “legal conclusion couched as a factual
 16 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555
 17 (2007)). The complaint “must contain sufficient factual matter, accepted as true, to state a claim
 18 to relief that is plausible on its face.” *Id.* at 678. This requirement is met when the plaintiff
 19 “pleads factual content that allows the court to draw the reasonable inference that the defendant
 20 is liable for the misconduct alleged.” *Id.* The complaint need not include detailed allegations,
 21 but it must have “more than labels and conclusions, and a formulaic recitation of the elements of
 22 a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility, a plaintiff’s
 23 claims must be dismissed. *Id.* at 570.

1 Where a complaint is dismissed for failure to state a claim, “leave to amend should be
 2 granted unless the court determines that the allegation of other facts consistent with the
 3 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
 4 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

5 **B. Analysis**

6 Defendants argue for dismissal because Plaintiff’s Complaint fails to show deliberate
 7 indifference by any defendant and, at most, shows a difference of opinion regarding Plaintiff’s
 8 medical treatment. *See gen.* Dkt. #52. Under the Eighth Amendment, “[p]rison officials have a
 9 duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical
 10 care, and personal safety.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). The Eighth
 11 Amendment’s prohibition on cruel and unusual punishment prevents government officials from
 12 acting with deliberate indifference to a prisoner’s health and safety, *Hope v. Pelzer*, 536 U.S.
 13 730, 737-38 (2002), or serious medical needs, *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). For
 14 an Eighth Amendment violation, a plaintiff must meet both an objective and subjective test for
 15 deliberate indifference: he must “objectively show that he was deprived of something
 16 ‘sufficiently serious,’” and “make a subjective showing that the deprivation occurred with
 17 deliberate indifference to the inmate’s health or safety.” *Foster v. Runnels*, 554 F.3d 807, 812
 18 (9th Cir. 2009) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The subjective
 19 “deliberate indifference” test requires showing the prison officials: (1) were aware of a
 20 “substantial risk of serious harm” to his health or safety; and (2) had no “reasonable” justification
 21 for the deprivation despite the risk. *Thomas v. Ponder*, 611 F.3d 1144, 1150-51 (9th Cir. 2010).

22 According to the Ninth Circuit, “[p]rison officials are deliberately indifferent to a
 23 prisoner’s serious medical needs when they deny, delay, or intentionally interfere with medical
 24 treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (internal quotes omitted). “[A]

1 serious medical need is present whenever the failure to treat a prisoner's condition could result in
 2 further significant injury or the unnecessary and wanton infliction of pain." *Clement v. Gomez*,
 3 298 F.3d 898, 904 (9th Cir. 2002). However, a mere difference of opinion over proper medical
 4 care is insufficient to establish deliberate indifference. *Jackson v. McIntosh*, 90 F.3d 330, 332
 5 (9th Cir. 1996) (citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989)). To have a viable
 6 Eighth Amendment claim involving alternative medical treatment, a plaintiff must show "that
 7 the course of treatment the doctors chose was medically unacceptable under the circumstances .
 8 . . . and . . . that they chose this course in conscious disregard of an excessive risk to plaintiff's
 9 health." *Id.* at 332 (citations omitted).

10 Regarding Plaintiff's Eighth Amendment *Bivens* claim, U.S. Magistrate Judge Peterson
 11 recommended the following in her R&R:

12 Plaintiff alleges no facts in his amended complaint from which the Court
 13 could reasonably infer that Defendants violated his Eighth Amendment rights. As
 14 explained above, Plaintiff's complaint is essentially about a BOP policy which
 15 precluded him from receiving treatment while he was confined at FDC SeaTac
 16 because that was not his designated facility and because his APRI score, which is
 17 used to predict the presence of fibrosis and cirrhosis, placed him at a lower priority
 18 level to receive treatment. While Plaintiff asserts in his amended complaint that he
 19 suffered occasional symptoms attributable to his Hepatitis C, including pain,
 20 discomfort and fatigue, he does not allege facts demonstrating that he had a
 21 compelling or urgent need for treatment while at FDC SeaTac. It is important to
 22 note that Plaintiff was not denied all access to treatment, the desired treatment was
 23 merely deferred until he arrived at his designated facility, FCI Sheridan. Plaintiff
 24 makes clear in his amended complaint that he was successfully treated for his
 Hepatitis C after he arrived at FCI Sheridan. (*See* Dkt. # 14 at 19.)

Plaintiff claims that the delay in receiving treatment caused him harm
 because "[i]t has been proven that everyday Hep. C. is left untreated, it causes
 [irreparable] and [irreversible] damage." (*Id.* at 20.) This allegation is vague and
 conclusory at best. Plaintiff alleges no facts demonstrating that he suffered any
 actual or substantial harm as a result of the delay. In this Court's view, Plaintiff's
 Eighth Amendment claim alleges, at most, a difference of opinion concerning
 proper medical care. Plaintiff deemed it imperative to obtain the treatment
 immediately whereas Defendants relied on BOP clinical guidelines to defer
 treatment temporarily. The fact that Defendants relied on those guidelines is
 insufficient to establish deliberate indifference. Accordingly, Plaintiff's Eighth

1 Amendment claim is subject to dismissal for failure to state a claim upon which
2 relief may be granted.

3 Dkt. #36 at 15-16.

4 The Court agrees with the R&R. As stated above, though Plaintiff's APRI rose above a
5 2.0 at some point after November 2017, his APRI was below 2.0 upon testing in January 2018.
6 Defendants advised Plaintiff on his illness and treatment according to BOP policy, which, due to
7 Plaintiff's APRI being below a 2.0, did not demonstrate an immediate need for treatment prior
8 to his arrival at his designated facility, FCI Sheridan. Plaintiff contends that Defendants "relied
9 on old, outdated medical records" to determine that Plaintiff showed no signs of fibrosis or other
10 tissue or liver damage. Dkt. #14 at 16. However, the record demonstrates otherwise, as
11 Defendants consistently advised Plaintiff on treatment based on his updated APRI and BOP
12 policy. Furthermore, as Judge Peterson noted, Plaintiff was not denied all treatment related to
13 his symptoms but only his desired treatment. For example, Plaintiff states that in July 2018, he
14 "went to sick call" concerning "having a tough time swallowing" and was referred to an outside
15 Ear, Nose, and Throat Specialist, whom he saw in September 2018. *Id.* at 17. Plaintiff alleges
16 no specific, actual, or substantial harm from delaying treatment until his arrival at FCI Sheridan
17 but only potential harm based on untreated Hepatitis C, which "is vague and conclusory at best."
18 Dkt. #36 at 16. Nothing in Plaintiff's Complaint demonstrates deliberate indifference or
19 medically unacceptable treatment in conscious disregard of risks by Defendants in relying on
20 BOP policy and Plaintiff's updated APRI scores to determine that waiting until Plaintiff was at
21 his permanent location of FCI Sheridan for Hepatitis C treatment was a safe course of treatment.
22 The Court shall dismiss Plaintiff's Eighth Amendment claim.

23 //
24 //

1 **IV. CONCLUSION**

2 Accordingly, having reviewed the instant Motion, Plaintiff's Complaint, the responses
3 and replies, if any, and the remainder of the docket, the Court hereby finds and ORDERS that
4 Defendants' Motion to Dismiss, Dkt. #52, is GRANTED. Plaintiff's amended Complaint and
5 this action are DISMISSED with prejudice. The Clerk shall send a copy of this Order to Plaintiff
6 and counsel for Defendants.

7 DATED this 24th day of February, 2025.

8 

9 RICARDO S. MARTINEZ
10 UNITED STATES DISTRICT JUDGE